FILED BY CLERK
SEP 18 2008
COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

GILE E. SIEVERS, a qualified elector of the Town of Payson, Plaintiff/Appellee, v. TOWN OF PAYSON, a municipal corporation; SILVIA SMITH, in official capacity as Town Clerk and election official; MAYOR KENNY J. EVANS, in his official capacity as Mayor; VICE-MAYOR SU CONNELL; COUNCIL MEMBERS MIKE VOGEL, JOHN WILSON, RICHARD CROY, MICHAEL HUGHES, and ED BLAIR, collectively in their official capacities as members of the Town of Payson Council, Defendants/Appellants, and FRIENDS OF PAYSON, Intervenor/Real Party in Interest/Appellant.	2 CA-CV 2008-0130 DEPARTMENT A MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF GILA COUNTY

Cause No. CV2008-0272

Honorable Robert Duber II, Judge

REVERSED AND REMANDED WITH DIRECTIONS

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¶1 This is an appeal in an election matter, which is expedited pursuant to Rule 8.1, Ariz. R. Civ. App. P. Appellants the Town of Payson (the Town), the Town's mayor, clerk, and council, and appellant/real party in interest Friends of Payson (the Committee) contend the trial court erred in granting summary judgment in favor of appellee Gile Sievers, a Payson resident, invalidating all signatures obtained on the Committee's referendum petition, and permanently enjoining the relevant appellants from placing the referendum on the ballot "in any pending or subsequent election," including that to be held in November 2008. For the reasons stated below, we reverse and remand the case to the trial court with directions to enter judgment for appellants.

¶2 We review de novo a trial court's order granting summary judgment and view the facts and all reasonable inferences arising therefrom in the light most favorable to the

nonmoving party. *Hourani v. Benson Hosp.*, 211 Ariz. 427, ¶ 13, 122 P.3d 6, 11 (App. 2005). "A motion for summary judgment should only be granted if 'there is no genuine issue as to any material fact and . . . the moving party is entitled to judgment as a matter of law.'" *Id.*, *quoting* Ariz. R. Civ. P. 56(c) (alteration in *Hourani*). Additionally, "[o]ur review . . . is de novo because the trial court's ruling[] hinge[d] on '. . . pure questions of law, including matters of statutory interpretation.'" *Robson Ranch Mountains, L.L.C. v. Pinal County*, 203 Ariz. 120, ¶ 13, 51 P.3d 342, 347 (App. 2002), *quoting In re United States Currency of $26,980.00*, 193 Ariz. 427, ¶ 5, 973 P.2d 1184, 1186 (App. 1998).

¶3 The relevant facts are undisputed. On July 2, 2008, the Payson Town Council approved a resolution that permitted the Town to lease a portion of one of its parks to the Valley of the Sun YMCA. On July 8, Vicki Lucas and Judy Shaffer Koetter, as Chairman and Treasurer respectively, filed with the Town clerk a Statement of Organization on behalf of a referendum committee that called itself "Friends of Payson." On that same day, the Committee filed an Application for Initiative or Referendum Petition Serial Number, seeking to place the resolution on the November 2008 ballot. On July 10, Lucas and Koetter filed an amended Statement of Organization on behalf of the Committee. Unlike the initial statement, on the amended statement Lucas included the serial number that had been issued by the Town clerk, but did not include the serial number in the Committee's name on the form. In

addition, on the amended statement Lucas, perhaps mistakenly and incorrectly, checked the box next to the word "opposed."[1]

¶4 The trial court granted Sievers's motion for summary judgment after concluding that relevant provisions in both Title 16 and Title 19, A.R.S., applied; that A.R.S. § 16-902.01(F) was controlling; and that the Committee had failed to strictly comply with its terms. The parties essentially agree that, if subsection (F) applies to referendum petitions,[2] the Committee's statements of organization did not strictly comply with its requirements. Specifically, neither the first nor the amended Statement of Organization "include[d] in the name of the political committee the official serial number for the petition and a statement as to whether the political committee supports or opposes the passage of the ballot measure," as § 16-902.01(F) expressly requires. It also appears the trial court granted Sievers relief based solely on A.R.S. § 19-114(B), which provides, in relevant part, that signatures obtained by a political committee on a referendum petition "prior to the filing of the committee's statement of organization or prior to the filing of the five hundred dollar threshold exemption statement pursuant to § 16-902.01 are void and shall not be counted in determining the legal sufficiency of the petition." We conclude the trial court erred.

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[1]According to the Committee, "Lucas believed she had to indicate whether the committee was opposed to the actual legislation being referred instead of the correct choice that the committee was in favor of the referendum itself."

[2]The Town argues § 16-902.01(F) does not apply to "pre-ballot" matters such as referendum petitions, before they have been qualified for the ballot, based on that subsection's reference to a "ballot proposition election" and "the ballot measure." In view of our disposition on other grounds, we do not address that argument.

¶5 For purposes of this appeal, we assume, without deciding, that the trial court was correct that the requirements of all provisions of § 16-902.01, including subsection (F), apply to referendum petitions such as the one proposed by the Committee. That statute is referred to in A.R.S. § 19-111(A) and § 19-114(B), both of which pertain to referenda. Additionally, we agree with the trial court's apparent conclusion that, generally, a person or group referring a matter to the electorate must strictly comply with the statutes applicable to the referendum process. *See, e.g.*, *W. Devcor, Inc. v. City of Scottsdale*, 168 Ariz. 426, 428-29, 814 P.2d 767, 769-70 (1991) (requiring strict compliance with constitutional and statutory requirements because referendum power permits "'minority to hold up the effective date of legislation which may well represent the wishes of the majority'"), *quoting Cottonwood Dev. v. Foothills Area Coal.*, 134 Ariz. 46, 49, 653 P.2d 694, 697 (1982).

¶6 Sievers argues, and we agree, that § 19-114(B) "should be . . . applied as it is written." But we disagree with his assertion that, under that statute, "when a party does not comply with [all] the requirements of A.R.S. § 16-902.01," that "failure . . . voids all signatures collected prior to compliance." Rather, § 19-114(B) only prescribes the consequence of a political committee's failing to timely file a statement of organization, not its filing of a statement that might be technically defective.

¶7 Similarly, we are not aware of any statute directly prescribing the consequences if, as here, a political committee's application for a referendum petition is accepted and a serial number issued when a technically defective statement of organization is submitted with

the application. *See* § 19-111(A). Moreover, the record reflects that the Committee's actual application for a referendum petition serial number met the requirements of § 19-111(A). Sievers does not argue otherwise.

¶8 As this court recently noted in *Harris v. Cochise County*, consistent with the strong public policy in this state that favors facilitating the referendum process, "our courts have held that, unless the failure to comply strictly with a statutory requirement is expressly made fatal, that failure 'does not make the signature appearing on the petitions null and void, but merely destroys their presumption of validity.'" 536 Ariz. Adv. Rep. 15, ¶¶ 14, 21 (Ct. App. Aug. 4, 2008), *quoting Direct Sellers Ass'n v. McBrayer*, 109 Ariz. 3, 5, 503 P.2d 951, 953 (1972); *see also Forszt v. Rodriguez*, 212 Ariz. 263, ¶¶ 14, 20, 130 P.3d 538, 541, 543 (App. 2006) (political committee's "fail[ure] to strictly comply with an express statutory requirement when it filed its petition without the copies of the ordinance attached to each signature page" did not require all signatures being declared void when statute did not "'expressly and explicitly' render the petitions void" in that situation).

¶9 As we noted above, § 19-114(B), the sole basis for the trial court's ruling invalidating the signatures obtained on the referendum petitions, expressly renders "void" such signatures only if obtained before any statement of organization is filed, not if the statement as filed is technically defective. The Committee's amended Statement of Organization contained the correct referendum petition serial number, albeit only on the line specifically calling for that number, and the Committee's application clearly indicated the

Committee would be circulating and supported the referendum petition. And, unlike in *Harris*, 536 Ariz. Adv. Rep. 15, ¶¶ 21-23, there is no issue here about the validity of the signatures the Committee obtained. Indeed, Sievers acknowledges as a fact that is "not contested" that the Committee "gathered a sufficient number of valid signatures." And Sievers conceded at oral argument in this court that nothing in the record establishes those who signed the petition had been misled either by the Committee's name or the technically defective Statements of Organization.[3] Moreover, Sievers does not dispute the following assertions in the Committee's brief:

> [T]he [Committee's] referendum was fine in all other respects save one. There are no allegations that the petitions were circulated improperly, that the form of the petition was flawed or that none other than the requisite amount of registered voters actually signed the referendum. So what did that one error do in a real and practical sense? Nothing. The error had absolutely no impact on the process, the signers, the circulators, or the validation of the signatures.

¶10 In granting summary judgment in favor Sievers, the trial court largely relied on *Israel v. Town of Cave Creek*, 196 Ariz. 150, 993 P.2d 1114 (App. 1999). The court there reversed a summary judgment in favor of the Town of Cave Creek, which had denied the plaintiff's application for a referendum petition serial number. *Id*. ¶ 1. The plaintiff's

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[3]We acknowledge and do not minimize Sievers's contention that a political committee's name "is not a trifle," "is an important tool of disclosure that informs electors about forces behind a referendum effort," and that failure to strictly comply with the name requirements in § 16-902.01(F) could possibly be deceptive and lead to voter confusion. But the record does not reflect any such deception or confusion here or any intent or ulterior motive on the Committee's part to sidestep those requirements.

referendum application did not list the name of any organization he represented, as required by § 19-111(A). The court found a triable question of fact existed on whether the plaintiff had actually represented the interests of a particular organization and, therefore, had filed a deficient application that failed to identify his organizational affiliation. *Israel*, 196 Ariz. 150, ¶¶ 25-26, 993 P.2d at 1119. In a footnote, the court stated: "[A] failure to make a required organizational listing does not, strictly speaking, invalidate an application under A.R.S. § 19-111(A). Instead, pursuant to A.R.S. § 19-114(B), it invalidates any signatures obtained on referendum petitions circulated pursuant to an insufficient application." *Israel*, 196 Ariz. 150, n.7, 993 P.2d 1114, 1119 n.7. But the alleged deficiency there involved the application itself, not the statement of organization as set forth in § 16-902.01.[4] Again, the Committee's application here complied with all legal requirements, and we do not find *Israel* controlling or supportive of the trial court's ruling in this case.

¶11 For the reasons stated, we reverse the trial court's order granting summary judgment in Sievers's favor. And, because the material facts are undisputed and appellants are entitled to judgment as a matter of law, we remand the case to the trial court with directions to enter judgment in their favor. *See Anderson v. Country Life Ins. Co.*, 180 Ariz. 625, 628, 886 P.2d 1381, 1384 (App. 1994) (when material facts are undisputed and issues

[4]We find somewhat persuasive the court's decision in *Van Riper v. Threadgill*, 183 Ariz. 580, 905 P.2d 589 (App. 1995), in which the court excused the applicant's complete failure to file any statement of organization. We recognize, however, there have been significant statutory changes since that case was decided.

can be decided as matter of law, we may vacate trial court's grant of summary judgment in favor of one party and direct entry of judgment for other party if appropriate).

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JOHN PELANDER, Chief Judge

CONCURRING:

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JOSEPH W. HOWARD, Presiding Judge

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J. WILLIAM BRAMMER, JR., Judge